

REMARKS/ARGUMENTS

These remarks are set forth in response to the Office Action. As this amendment has been timely filed within the three-month statutory period, neither an extension of time nor a fee is required. In the Office Action, the Examiner has rejected claims 2, 3 and 6 under 35 U.S.C. § 112, second paragraph as being indefinite due to incorporation of the term "article of manufacture". In response, the Applicants have amended claims 2 and 3 to strike the comparison to the "article of manufacture" which the Examiner considered to be an unclaimed element. Also, the Applicants have amended claim 6 to strike the further definition of "article of manufacture" and instead, the Applicants have clarified that the "support surface" has a "configuration for direct communication with a wire mesh shelf". Accordingly, the Applicants request the withdrawal of the rejections based upon 35 U.S.C. § 112, second paragraph.

Turning now to the rejections on the art, the Examiner has rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 4,688,684 to Young et al. (Young), claims 1, 2 and 7 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 5,845,791 to Kawolics and claims 1 and 2 under 35 U.S.C. § 102(b) as being anticipated by United States Patent No. 2,172,013 to Parry. Finally, the Examiner has rejected claims 3, 4 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Young alone as well as Kawolics alone, and also the Examiner has rejected claims 4 and 5 under 35 U.S.C. § 103(a) as being unpatentable over Parry alone. In response the Applicants have amended claims 1 and 7 and request that the Examiner re-consider the viability of each of Young, Kawolics and Parry as supporting references in view of the newly amended claims.

First considering the Applicants; invention, the Applicants have invented a stacking device. The stacking device can include a substantially flat board having a rigid construction. The flat board can include a stacking surface and a supporting surface opposite the stacking surface. The flat board can include a low cost disposable material such as reinforced cardboard, or a machine washable material such as metal, including stainless steel or aluminum, plastic, nylon or polypropylene, or a heat resistant material, for example microwave safe plastics, or a coated metal.

Notably, the stacking device can support stacked articles of manufacture on the stacking surface. More particularly, the stacking device can support the vertical stacking of a single column of one or more articles of manufacture, or the vertical stacking of one or more columns of one or more articles of manufacture. To support the stacked articles of manufacture, the supporting surface can directly communicate with supporting articles of manufacture. In this way, the normal force imposed upon the supporting surface by the supporting articles of manufacture alone can support the weight of the stacked articles of manufacture which can directly communicate with the stacking surface without requiring the assistance of ancillary supporting structures such as legs, columns, braces or poles.

Turning now to the cited art, the Young patent teaches a free-standing vertical display system for displaying merchandise such as beverage containers. The system includes a base and one or more trays which are slidably received on a center pole. The bottles rest on the tray beneath the bottles. When the tray is empty, it may be stored on four screws protruding from the top of the center pole, allowing the customer to access the lower trays. Importantly, in Young, the bottom surface of the trays alone cannot support the weight of the bottles stacked on top of

the tray. To wit, the center pole is required to stabilize the arrangement, without which the display system will topple. No teaching in Young suggests that the display can support merchandise without the center pole.

By comparison, Kowlics teaches a device for storing and dispensing and dispensing drink lids. The device has an elongated body shaped to contain the drink lids in a stacked arrangement. Optionally, a separation clip can be provided to separate two groups of stacked lids. Importantly, like Young, Kowlics requires the assistance of vertical support structures to stabilize the stacking of drink lids. No teaching in Kowlics suggests that the drink lids can be stably stacked without the assistance of the "elongated body" of the device. Likewise, Parry teaches a bread holder in which a loaf of bread can be stacked and compressed which requires the assistance of a vertical support structure to ensure that stacked bread does not topple.

In each of Young, Kowlics and Parry, a vertical support structure is required to support the stacking of articles, be those articles bottles, drink lids or bread slices. However, recognizing the Examiner's point, the Applicants have amended claims 1 and 7 to clarify that the stacking device of the Applicants' invention avoids the use of a vertical support structure as shown in the various figures of the Patent Application. In this regard, in the Description of the Related Art of the Patent Application, the Applicants recognized the inherent deficiencies of a stacking system which requires the use of vertical support structures--namely support legs--which generally consume storage space below a stacking surface.

Conversely, in Figure 1A of the Patent Application, the "legless" nature of the stacking device of the Applicants' invention is shown, which legless nature is an essential claimed feature absent from each of Young Kowlics and Parry. Hence, in view of the amended claims and under

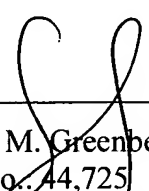
the present circumstances, neither Young, Kowlics and Parry can satisfy the basic requirements of the MPEP section 2131 which states, "A claim is anticipated *only if each and every element as set forth in the claim is found*, either expressly or inherently described in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628 (Fed. Cir. 1987).

Thus, the Applicants believe that amended claims 1 through 7 distinguish over the cited art and stand patentable and ready for an indication of allowance.

Accordingly, the Applicants respectfully request the withdrawal of the rejections under 35 U.S.C. §§ 112, second paragraph, 102(b) and 103(a) based upon the amendments to the claims and the foregoing remarks. This entire application is now believed to be in condition for allowance. Consequently, such action is respectfully requested. The Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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